

APPENDIX C

ECF Rules and Procedures

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE

ELECTRONIC CASE FILING RULES AND PROCEDURES

1. Scope

Unless otherwise provided, these policies and procedures apply to all cases assigned by the Court to the Electronic Filing System.

2. Definitions

- 2.1 "Electronic Filing System" means the Court's automated system for receipt, retention and retrieval of documents filed in electronic form.³
- 2.2 "Filing Error" means an error in submission of a filing to the Electronic Filing System, *e.g.*, a filing with an incorrect case number, with an incorrect docket entry or with the wrong PDF file attached to a docket entry.
- 2.3 "Filing User" means an individual registered with the Court to whom the Court has issued a login and password allowing the individual to access the Electronic Filing System for all permitted purposes.
- 2.4 "Notice of Electronic Filing" means the electronic notice generated by the Electronic Filing System which is e-mailed to participating Filing Users at the time a document is filed with the system. The Notice of Electronic Filing sets forth the time the document is filed, the names of the party and attorney filing the document, the type of document filed, the text of the docket entry describing the document as it will appear on the Court's docket, the name of each recipient of the Notice and an electronic link to the filed document allowing the recipients to retrieve the filed document.
- 2.5 "PACER" ("Public Access to Court Electronic Records") is an electronic public access service established by the Administrative Office of the United States Courts that allows access to federal court records, including those filed through the Electronic Filing System. Any person establishing a PACER account will be able to view, print and download information filed with the Electronic Filing System over the Internet.

³ The system is part of the Case Management/Electronic Case Files ("CM/ECF") application developed for the federal judiciary by the Administrative Office of the United States Courts.

2.6 "PDF" means Portable Document Format. PDF is the format in which electronically filed documents must be transmitted to the Electronic Filing System.⁴

2.7 "Technical Failure" means a malfunction of the Court's Electronic Filing System or the telecommunications facilities through which the system is accessed which prevents a Filing User from filing a document electronically. Technical Failure does not include a malfunction of a Filing User's computer and/or telecommunications facilities which prevents a Filing User from electronically filing a document.

3. Cases Assigned To The Electronic Filing System

All civil, criminal and miscellaneous cases shall be assigned to the Electronic Filing System.

4. Scope of Electronic Filing

4.1 General. Except as expressly provided herein, by local rule, by order of the Court or in exceptional circumstances, including a Technical Failure, a Filing User shall electronically file all documents required to be filed in all civil, criminal and miscellaneous cases.

4.2 Maximum Size of Filings. Filed documents cannot be greater than 2.5 MB in size. Documents greater than 2.5 MB in size must be divided into separate documents less than 2.5 MB in size.⁵ See also Section 4.8.

4.3 Civil Complaints. Civil complaints must be filed by Filing Users on paper in the traditional manner and not electronically and must be accompanied by a disk or CD-ROM containing the document in PDF format.

4.4 Removal Documents. Notices of removal must be filed by Filing Users on paper in the traditional manner and not electronically and must be accompanied by a disk or CD-ROM containing the document in PDF format. In addition, an electronic copy of all documents filed in the state court action, as required by 28 U.S.C. § 1441, *et seq*, must be submitted on a disk or CD-ROM in PDF format.

4.5 Charging Documents in Criminal Cases. Criminal complaints, indictments and informations must be filed by Filing Users on paper in the traditional manner and not electronically and must be accompanied by a disk or CD-ROM containing the documents in PDF format. The electronic copy of charging documents, including the complaint, information, indictment and superseding information or indictment, shall contain an image of any legally required signature.

4

Documents created in word processing programs can be converted to PDF by either using the word processing program or a separate software program such as Adobe Acrobat Writer. Paper documents can be scanned and converted to electronic PDF documents using the scanner's software. **A Filing User must verify that a document is an accurate representation of the scanned document prior to filing it.** See the User's Manual for further information.

5 See the User's Manual for further information.

- 4.6 Exhibits and Attachments. Filing Users shall file in electronic form all exhibits or attachments referenced in filed documents, unless the Court permits filing in paper form. Filing Users shall submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. The Court may require parties to file additional excerpts or complete documents when it deems it necessary.
- 4.7 Proposed Orders. Proposed orders should NOT be included as an attachment to an electronically filed motion or other request for relief. Proposed orders should be e-mailed as an attachment in WordPerfect format to the judges' chambers. See the User's Manual for e-mail addresses.
- 4.8 Administrative Record in Social Security Cases, State Court Record in Habeas Cases and Other Large Records. The administrative record in social security cases and the state court record in habeas cases shall be filed on paper and not electronically, unless otherwise ordered by the Court. Upon approval of the Court or the Clerk, other large records may be filed on paper and not electronically.

5. Registration and Passwords

Only a registered Filing User may electronically file documents with the Electronic Filing System.

Attorneys practicing before the Court, including those admitted pro hac vice and those authorized to represent the United States, shall, absent good cause shown, register as Filing Users of the Electronic Filing System. Registration shall be in the form prescribed by the Clerk and require each registrant's name, address, telephone number, Internet e-mail address and a confirmation that the attorney is admitted to practice before the Court. Registrants shall also have a PACER account and certify that they have read the Electronic Case Filing Rules and Procedures and will abide by them.

A party to an action who is not represented by an attorney may, with the Court's permission, register as a Filing User solely for purposes of that action. Registration shall be in a form prescribed by the Clerk and require identification of the action as well as the party's name, address, telephone number and Internet e-mail address. If, during the course of the proceeding, the party retains an attorney who is a registered Filing User, the attorney shall, upon entering an appearance, advise the Clerk to terminate the party's Filing User registration.

Registration as a Filing User constitutes consent to electronic service of all documents as provided herein, by the local rules of the Court and by any applicable rule of procedure.

Once registration is completed, the Court will send the Filing User an electronic confirmation of the assignment of a login and password.

No Filing User or other person may knowingly permit a Filing User's login and password to be used by anyone other than an authorized agent of the Filing User.

Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Filing Users may be sanctioned for failure to comply with this provision.

In the event that a Filing User believes that the security of an existing password has been compromised and that a threat to the Electronic Filing System exists, the Filing User shall immediately give notice by telephone to the ECF Help Desk⁶, so the Clerk's Office can render the password invalid. Filing Users giving telephonic notice that a password has been compromised shall also confirm that notice by facsimile transmission to the ECF Help Desk.

6. Signatures

Use of the login and password issued to a Filing User to effect the electronic filing of a document shall serve as the Filing User's signature on that document for all purposes, including those of Fed.R.Civ.P. 11.

Electronically filed documents shall set forth the Filing User's name, address, telephone number and Board of Professional Responsibility registration number. In addition, the Filing User's name shall be typed in the space where the signature would otherwise appear preceded by the symbol "s/".

A document containing the signature of a defendant in a criminal case may, at the option of the presiding judge, be filed: (1) in paper form with an original written signature; or (2) in electronic form as a scanned image of the document containing an image of the defendant's signature.

In order to file a document required to contain the signature of more than one person, the Filing User shall: (1) file a scanned image of the document containing all necessary signatures; (2) file the document without the requisite signatures but with a representation by the Filing User that all signatories have consented to the filing of the document; or (3) file the document in any other manner approved by the Court.

Documents requiring an original signature other than that of the Filing User (e.g., affidavits and declarations) shall be filed by transmitting a scanned image of the document to the Electronic Filing System in PDF format.

A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures must file an objection to the document within ten days of the Notice of Electronic Filing.

7. Retention Requirements

An electronically filed document that requires an original signature other than that of the Filing User (e.g., affidavits and declarations) shall be maintained in paper form by counsel representing the party on whose behalf the document was filed for one year after all time periods for all appeals expire. On request of the Court, counsel must provide the original document for review.

8. Effect of Electronic Filing

Electronic transmission of a document to the Electronic Filing System, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes under the Federal Rules of Civil and Criminal Procedure and the local rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55.

Each electronically filed document, as stored by the Court, becomes a part of the Court's official record and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form as required under paragraph 4 (which is deemed filed as of the date and time stamped on the paper filing), an electronically filed document is deemed filed as of the date and time stated in the Notice of Electronic Filing generated by the Electronic Filing System.

Filing a document electronically does not alter the filing deadline for that document. In order for a document to be considered timely filed on a deadline date the filing must be completed on the deadline date before midnight (local time) in the division where the case is pending.

9. Electronic Service of Filed Documents

The Notice of Electronic Filing generated through the Electronic Filing System shall, upon transmission by the Court, constitute service of the filed document upon Filing Users participating in a pending action. Parties who are not Filing Users must be served with a paper copy of any electronically filed document in accordance with the applicable federal rule of procedure.

A certificate of service must be included with all electronically filed documents stating that service was made upon Filing Users through the Electronic Filing System and further stating how service was accomplished on any participating party or counsel who was not served through the Electronic Filing System.

Initial documents, such as a complaint and summons in a civil case, must be served in accordance with the applicable rule of procedure.

10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a case assigned to the Electronic Filing System, the Clerk shall electronically transmit to Filing Users participating in the case a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing by the Clerk to the participating Filing Users shall constitute notice as required by Fed.R.Civ.P. 77(d) and Fed.R.Crim.P. 49(c). The Clerk shall give notice in paper form in accordance with the

applicable rule of procedure to a party who has not consented to electronic service.

11. Filing and Issuance of Court Documents

All orders, decrees, judgments, notices and other court-issued documents shall be electronically filed in accordance with these procedures. Upon filing such documents will be deemed to have been entered on the Court's docket under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55. Any order or other court-issued document filed electronically without the handwritten signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the document and it had been entered on the docket in paper form.

The Court may enter orders as entries on the Court's docket without filing a separate order in the Electronic Filing System. Such orders are official and binding upon the parties.

The Court may issue warrants or summonses electronically. However, they may only be served in accordance with Fed.R.Civ.P. 4 and Fed.R.Crim.P. 4(c).

A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the presiding judge requires.

12. Sealed Documents

Documents ordered to be placed under seal shall be filed in paper form and not electronically unless specifically authorized by the Court. The paper document shall be accompanied by a disk or CD-ROM containing the document in PDF format. A motion to file documents under seal may be filed electronically. An order of the Court authorizing the filing of documents under seal may be filed electronically. A paper copy of the order allowing documents to be filed under seal shall be attached to the documents when the documents are submitted to the Clerk for filing.

13. Technical Failures

A Filing User whose filing is made untimely as the result of a Technical Failure may seek appropriate relief from the Court.

14. Filing Errors

The Electronic Filing System will not allow a Filing User to correct a filing after it has been electronically submitted. Filing Users shall report Filing Errors to the Clerk's Office. If appropriate, the Clerk will make an entry in the Electronic Filing System indicating the document was filed in error. Filing Users may be required to re-file the document or file a motion requesting relief.

15. Public Access

Members of the public may review docket sheets and unsealed documents contained in the Electronic Filing System at the Clerk's Office or through the Court's Internet site, www.tned.uscourts.gov, after opening a PACER account.⁷

⁷ Public access to electronic documents filed in criminal cases will not be available until certain software modifications have been completed. Pending those modifications, access shall be limited to counsel for the government and the defendant.